

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.4357 of 2015 (O&M)

Date of Decision:11.9.2017

Sarla Nagpal

...Petitioner

Versus

M/s Bengali Sweet House and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjay Nagpal, Advocate for the petitioner.
Mr.Bhanu Partap Singh, Advocate for respondents No.3 to 5.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, filed under Article 227 of the Constitution of India, is directed against the order dated 18.5.2011 (Annexure P-3) and also the order dated 10.12.2009 (Annexure P-1), whereby suit of the plaintiff was dismissed for non-prosecution and her application for restoration of the suit was also dismissed by the learned trial court.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare perusal of the both the impugned orders (Annexures P-1 and P-3) will leave no room for doubt that the learned trial Court fell in serious error of law, while passing the second order dated 18.5.2011 (Annexure P-3), dismissing the application for restoration of the suit. It is so said because the learned trial court did not assign any reason, while passing the impugned order (Annexure P-3), thereby causing a serious prejudice to the plaintiff, without granting her an opportunity to prove her case on merits. Having said that, this Court feels no hesitation to conclude that since the learned trial court failed to exercise the jurisdiction vested in it, the impugned order cannot be sustained.

During the course of hearing, when learned counsel for the respondents was confronted with the non-speaking impugned order

(Annexure P-3), he had no answer and rightly so, it being a matter of record. In fact, the learned trial court ought to have appreciated the rules of procedure which are meant for advancing the cause of justice. Since no prejudice was going to be caused to the defendants, suit of the plaintiff ought to have been restored, allowing the application for restoration. At the most, a reasonable amount of costs could have been imposed on the plaintiff for restoration of her suit. In this view of the matter, since the impugned orders have been found suffering from patent illegality, these cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have caused a manifest injustice to the plaintiff-petitioner, these cannot be sustained. Accordingly, the impugned order dated 10.12.2009 as well as later order dated 18.5.2011 (Annexure P-3) are hereby set aside.

Application for restoration of the suit filed by the plaintiff-petitioner would stand allowed and her suit would be restored to its original number. The learned trial court is directed to proceed further with the suit and decide the same on merits.

Resultantly, with the above-said observations made and directions issued, the civil revision petition stands allowed, however, with no order as to costs.

11.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No